

**SUPPLEMENTAL McNAMARA DECLARATION**  
**EXHIBIT 2**

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE SOUTHERN DISTRICT OF NEW YORK  
3

4 HACHETTE BOOK GROUP, INC.,  
5 HARPERCOLLINS PUBLISHERS LLC,  
6 JOHN WILEY & SONS, INC., and  
7 PENGUIN RANDOM HOUSE LLC,

8 Plaintiffs,

9 vs.

Case No.

10 INTERNET ARCHIVE and DOES 1:20-cv-04160-JGK  
11 1 through 5, inclusive,  
12 Defendants.

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13  
14 -- ATTORNEYS' EYES ONLY --  
15

16 VIDEOTAPED RULE 30(B)(1) AND 30(B)(6) DEPOSITIONS OF  
17 HARPERCOLLINS PUBLISHERS LLC, BY CHANTAL RESTIVO-ALESSI

18 Remote Zoom Proceedings

19 New York, New York

20 Wednesday, December 1, 2021  
21

22 REPORTED BY:

23 LESLIE ROCKWOOD ROSAS, RPR, CSR 3462

24 Job No. 4867798

25 Pages 1 - 283

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1 Q. Okay. At a high level?

2 A. Not really, no.

3 Q. Okay. Are you aware of any impact on the

4 revenue of those titles coinciding with their

5 availability for borrowing from the Open Library? 14:44:06

6 A. Well, I -- I think this is a matter of, you

7 know, general -- general principles. So if we start from

8 the fact that we're not receiving any income like we

9 normally do for distribution to libraries, in the case of

10 the Internet Archive, so there clearly is a loss of that 14:44:33

11 income because we're not being paid.

12 And then in addition to that, you know, the

13 libraries themselves, I believe, are linking to the

14 website, and therefore, they're not buying copies either

15 in 26 circs or in pay per use. 14:44:52

16 And then, finally, the consumer might be

17 downloading -- as I said at the beginning of my -- you

18 know, of this long day, you know, this -- they might be

19 downloading it from the website or they might, and

20 therefore, they won't buy that product. 14:45:14

21 So I can't -- you know, I can't give you a

22 specific number, and I don't follow those titles, but it

23 goes -- to me, it seems like a no-brainer that we would

24 have loss of sales resulting from those three examples.

25 You know, the consumers not purchasing or not 14:45:32

1 reading in a library, the library linking out and not  
2 buying the product via the distributor from us, and the  
3 distributor not paying us.

4 Q. And the distributor not paying you, can you --

5 A. So the distributor would be, you know, if 14:45:50  
6 Internet Archive considers itself a distributor to  
7 libraries, then it would have to pay us the same way  
8 OverDrive or Hoopla or others pay us for every single  
9 product that they then in turn make available to  
10 libraries. 14:46:13

11 Q. You mentioned libraries that link to the  
12 Internet Archive. Can you elaborate on that a little  
13 bit?

14 A. Yes. So I believe there are libraries that are  
15 linking to the Internet Archive for their fulfillment of 14:46:32  
16 their, you know, eBook. And, you know, that is clearly  
17 in -- you know, that's clearly a replacement of a sale  
18 that would happen by -- you know, of an availability of a  
19 product that would happen by a library distributor to a  
20 library. 14:46:58

21 Q. How many libraries that lend HarperCollins  
22 titles have a link to the Internet Archive's website?

23 A. I don't know the specifics. I -- I assume  
24 Internet Archive does, though. So if they were to give  
25 us that list and tell us how many titles from our catalog 14:47:13

1 have been used and how many times they've been downloaded  
2 without payment to us, that would make it possible for us  
3 to quantify any damage.

4 Q. Why do you assume the Internet Archive has a  
5 list of libraries that link to it? 14:47:36

6 A. Well, because, you know, I run websites, and I  
7 know that to put a link on a website, you have to know  
8 about that -- you know, a link is something you actively  
9 manage.

10 Q. But if it's on a library website, wouldn't the 14:47:57  
11 library be managing that link?

12 A. Yeah, but it would link to somewhere else;  
13 right? So I think there is a transmission.

14 Q. I see.

15 And you -- you said earlier that you believe 14:48:13  
16 that libraries link to the Internet Archive. What is  
17 that belief based on?

18 A. I've seen some screen shots, and I've also  
19 seen -- you know, yeah. That's pretty much it. I've  
20 seen some screen shots. 14:48:33

21 Q. Okay. So what investigation or analysis, if  
22 any, has HarperCollins conducted to determine whether the  
23 availability of its titles on the Internet Archive have  
24 affected revenue for those titles?

25 MS. STEINMAN: Objection. 14:48:58

1 Go ahead.

2 THE WITNESS: I think, as I said before, I  
3 haven't or Harper hasn't done any specific analysis.  
4 Because in order to do specific analysis, you need to  
5 obtain specific data. However, I think the principle 14:49:14  
6 that our content is available for free and not being paid  
7 for, not for -- to us, not to our authors, is clearly  
8 damage in itself.

9 I don't have to prove the quantum to know that  
10 I'm missing on a sale. I know that I'm missing on that 14:49:35  
11 sale. Now how much am I missing? That's the quantum,  
12 not the sale itself.

13 Q. BY MS. LANIER: Forgive me if I'm not hearing  
14 it. Are you saying "quantum," like Q-U-A-N- --

15 A. Quantum like -- sorry, this is my Italian thing, 14:49:51  
16 but like amount, is maybe the right term in English.

17 Q. Okay. Got it.

18 That was not meant to be a -- I was just wanting  
19 to make sure I was hearing the word right.

20 A. Yeah, sorry. No, sorry. I do have to apologize 14:50:06  
21 because sometimes I go into another language.

22 Q. Certainly no need to apologize.

23 Okay. Does -- does HarperCollins provide free  
24 copies of physical books to promote a title?

25 A. Yes, we do -- 14:50:40

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1 STATE OF CALIFORNIA ) ss:

2 COUNTY OF MARIN )  
3

4 I, LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462, do  
5 hereby certify:

6 That the foregoing deposition testimony was  
7 taken before me at the time and place therein set forth  
8 and at which time the witness was administered the oath;

9 That testimony of the witness and all objections  
10 made by counsel at the time of the examination were  
11 recorded stenographically by me, and were thereafter  
12 transcribed under my direction and supervision, and that  
13 the foregoing pages contain a full, true and accurate  
14 record of all proceedings and testimony to the best of my  
15 skill and ability.

16 I further certify that I am neither counsel for  
17 any party to said action, nor am I related to any party  
18 to said action, nor am I in any way interested in the  
19 outcome thereof.

20 IN WITNESS WHEREOF, I have subscribed my name  
21 this 3rd day of December, 2021.  
22

23   
24

25 LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462